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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 91

MURIEL MAY SCOTT, née PLUMMER,

Petitioner,

—against—

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

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Opinions Below

The opinion of the United States Court of Appeals for the Second Circuit is reported at 350 F. 2d 279 and appears in the Record at R 22. The determination of the Special Inquiry Officer dated February 28, 1962, and of the Board of Immigration Appeals dated August 14, 1962, are found on pages R 4 and R 14 of the Record respectively.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Writ of Certiorari to the United States Court of Appeals for the Second Circuit was granted on March 21, 1966 (383 U.S. 941).

Question Presented

Whether an alien who entered the United States as a non-quota immigrant by means of a fraudulent marriage to a United States citizen, who subsequently gave birth to a citizen child and who was otherwise admissible at the time of entry but for the fraud in avoiding quota requirements, is subject to the saving provisions of Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f) which prevents deportation.

Statutory Provision

Section 241(f), Immigration and Nationality Act; 8 U.S.C. 1251(f)

"The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is spouse, parent, or a child of a United States citizen

or of an alien lawfully admitted for permanent residence."

Statement

Petitioner, then a native of Jamaica, British West Indies, obtained admission to the United States in 1958, under a non-quota immigrant visa issued to her as the wife of Edward Lee Scott, a United States citizen. Four years later deportation proceedings were instituted against petitioner charging that she had entered into the marriage ceremony with Scott " . . . solely for the purpose of qualifying for a non-quota immigrant visa . . . without the intention of establishing a bona fide marital relationship with him" and had not in fact subsequently established such a relationship with him.

Such conduct is grounds for exclusion at entry under 8 U.S.C. 1182(a) (19), (which deals with visas procured by fraud or misrepresentation of material facts) and hence is grounds for deportation under 8 U.S.C. 1251(a) (1).

Insofar as is relevant to the case in its present posture, the sole defense to the deportation was that petitioner was relieved of the consequences of her fraud by virtue of her having given birth to and being the parent of a citizen of the United States. 75 Stat. 655 (1961), 8 U.S.C. 1251(f).

This statute exempts from the deportation provisions of 8 U.S.C. 1251 those persons who obtained visas and entry to the United States by fraud and misrepresentation provided that the alien is the spouse, parent, or child of a citizen of the United States and that the alien was "otherwise admissible," at the time of entry.

In the court below it was held that petitioner qualified for the exemption in all respects but one; she was not "otherwise admissible" because at the time of her entry the British sub-quota for Jamaica, British West Indies, was oversubscribed. (350 F. 2d 279).

This Court granted certiorari here and in *Immigration and Naturalization Service* v. *Errico,* No. 51 O.T. 1966 to resolve the conflicting interpretations given the "otherwise admissible" language of the statute; the Ninth Circuit having held in *Errico* that the exemption applicable to persons situated as is petitioner (349 F. 2d 541).

ARGUMENT

POINT I

The Purpose and Language of the Statute Negate the Possibility That "Otherwise Admissible" Was Intended to Encompass the Availability of Quota Status.

We need not search far to determine what Congress sought to accomplish by this legislation. It was a clear recognition that maintaining the integrity of the family unit was, as it always has been, a vital and paramount national policy. Even beyond the benefit to the alien is the likelihood, far from remote in this case, that expulsion of the alien will result in banishment of a citizen-child during the period of its minority.

With the exception of the fraud by which she obtained her nonquota immigrant visa, petitioner has qualified as a person "otherwise admissible" since she falls within none of the mental, physical, moral or political classes of aliens proscribed from receiving visas by 8 U.S.C. §1182(a).

However, the court below, at the government's urging, determined that even though petitioner met the so-called "qualitative" test, she was not "otherwise admissible" because at the time of entry she would not have been able to obtain a quota immigrant visa due to the oversubscription of the immigrant quota from Jamaica.

This interpretation can stand only if we are prepared to attribute to Congress the intention of passing a law, widely heralded as humanitarian, which affects almost no one and which is inconsistent with other laws contemporaneously passed.

A. Contemporaneous Legislation

The first part of Section 7 of the 1957 Act (71 Stat. 639), carried forward by Section 16 of the Act of September 26, 1961 (75 Stat. 650, 655) and appearing in 8 U.S.C. §1251(f) deals with affording aliens relief from expulsion. The second sentence of Section 7 of the 1957 Act, carried forward as Section 15 of the 1961 Act and appearing in 8 U.S.C. §1182(i) deals with providing relief from *exclusion* for the non-resident alien with the same familial status to citizens as petitioner. The latter statute provides:

> ". . . any alien who is the spouse, parent or child of a United States citizen . . . and who is excludable because (1) he seeks, has sought to procure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation or (2) he admits the commission of perjury in connection therewith, shall . . . be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or re-

applying for a visa and for admission to the United States."

This section, using the same "otherwise admissible" language as the statute now before the Court for construction clearly does not contemplate the availability of a quota place since the familial relationship which is the factor which gives rise to the exemption from excludability also confers nonquota or preferred quota status upon the alien. 8 U.S.C. 1101(a)(27)(A, B); 8 U.S.C. 1153(a)(2).

To attribute to Congress the intention of incorporating the quota system into the familial exemption from expulsion would mean that a more favorable exemption is granted to aliens outside the United States who are merely seeking to re-establish a family tie which has already been broken, while a less favorable exemption is given to the resident alien in an existing family unit. It is inconceivable that the same "otherwise admissible" language should, in successive sentences of the 1957 Act, promote the national policy of uniting a nonresident alien with his American family and yet require the breakup or emigration of the American family of a resident alien. It is all the more illogical to believe that Congress intended to compel expulsion without leaving any discretion to the Attorney General to exempt certain individuals, a discretion given in the exclusion statute (8 U.S.C. §1182(i)).

It is true that the construction which we place upon the two statutes which stand in pari materia gives broader rights of residence to the resident alien than to the nonresident alien—i.e., the Attorney General's discretion is not involved in the former situation. But the only alternative which the Government offers gives an even broader right to residence for the nonresident alien.

B. Legislative History

No clear reference to the meaning of the words "otherwise admissible" appears in any of the records or reports accompanying the 1957 Act.

General references to the effect that the entire sixteen sections of the Act did not change the quota system were twice made by Senator Eastland during the course of the Senate debates (103 Cong. Rec. 15487, 89 [Aug. 21, 1957]) and also by Representatives Celler and Chelf in the House of Representatives (103 Cong. Rec. 16300, 16305-06 [Aug. 28, 1957]). On the other hand general references to the effect that Section 7 was designed to relieve hardship conditions were made by the then Senators Kennedy and Johnson, and Senator Eastland (103 Cong. Rec. 15497, 15498 and 15487, respectively).

The general tenor of all the references to the 1957 Act in the House Report (No. 1199, 85th Cong., 1st Session):

> ". . . indicates that the Congress intended to provide for a liberal treatment of children and was concerned with keeping families of United States citizens and immigrants united." (at p. 7)

Later in the House Committee report, at pp. 10-11, it is stated that the exemption provisions of Section 7 include

> ". . . the spouses [sic], parents and children of United States citizens or lawfully resident aliens . . . who may have misrepresented their place of birth, nationality, immigrant status and the like if their exclusion would work extreme hardship on their families. In respect to expulsion of aliens who are the spouses, parents, or children of United States citizens or law-

> fully resident aliens, and who are already in the United States, misrepresentation in obtaining documentation or entry would not be a ground for deportation if the aliens were otherwise admissible at the time of entry."

The Report also states that in the past, "considering the family situation" had resulted in the enactment of a number of private relief bills, but that the "more humanitarian approach" required the extension of relief to an entire defined class of aliens rather than the selected group of individuals who had reached members of Congress for special relief.

The belief was also stated in this report, at p. 11, that most resident aliens falling into the latter category were Mexican nationals. The fact that the largest single group which might benefit by the exemption came from Mexico, a non-quota country, does not in any way indicate that non-quota aliens were the only group intended to be reached by the statute.

C. The Effects of the Statute

In the court of appeals it was held that petitioner's interpretation of the familial exemption for fraud " . . . is likely to invite frustration and wholesale evasion of the quota system . . . " This ominous prediction of the effects of relieving petitioner of her fraud is unwarranted. First it assumes wholesale, undiscovered fraudulent misrepresentations such as were made by petitioner; then it further assumes that the immigrant intended, at the time of the fraudulent entry, to subsequently change her familial status in such a way as to acquire a citizen spouse or child. Such an hypothesis is just too far-fetched to have

any meaning. We hardly think that petitioner at the time of her fraudulent entry planned to bear a citizen-child or that she anticipated that such planned parenthood would relieve her of her fraud.*

The Government's interpretation of what effect was intended deprives the statute of any effect except under some rather contrived and artificial situations.

In the court below the government contended and the Court held that the "otherwise admissible" language included both qualitative admissibility and the availability of a quota place at the time of entry. The effect of this interpretation is to relieve of the fraud or material misrepresentation only those aliens who never had to perpetrate the fraud to gain admission. We find it hard to believe that an alien would lie when the truth would be no bar to admission or that such misrepresentation or fraud if committed would be material.**

Nor do we see how Section 241(f) of the Immigration Act can now continue to operate with any real vitality in light of the Immigration Act of 1965 (Public Law 89-236; 79 Stat. 911) which sets a quarterly world-wide ceiling of 45,000 quota immigrants for the first three-quarters of any fiscal year. Thus any person who enters in a particular quarter of the year in which this world-wide ceiling is filled would under the government's interpretation not be

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* Of course the exemption statute did not exist at the time of petitioner's entry; but even if it did it would take a rather sophisticated alien to be aware of it and plan accordingly.

** In this context it should be noted that the fraud or misrepresentation in order to be an excludable or deportable offense must be *material*. We have difficulty in seeing how a misrepresentation or fraud could be material if the alien would have been admitted if he told the truth.

"otherwise admissible" even though his country's quota was not used up. However, if the alien waits until the fourth-quarter of any year after fiscal 1965 then he may be admissible because of the pooling arrangement of unused national quctas under the 1965 Act (8 U.S.C. §1151(d)).

In short, the Government's interpretation renders the exemption provision either virtually meaningless or effective only according to a sliding scale of arbitrary values which bares no relationship to Congress' concern for maintaining existing family units.

The interpretation which petitioner places upon the "otherwise admissible" language will effect the obvious and salutary desire of holding together existing families and poses no realistic threat of impairing the effectiveness of past or present quota restrictions. While we cannot hazard a guess as to the numbers affected under petitioner's interpretation, certainly it is not an amount sufficient to undermine our quota system.

Summary

Only by giving the statute the permissible construction of including only qualitative standards of admissibility can this Court give any real meaning to its provisions. Such a construction is not only consistent with the language used but is compelling if the specific provision is viewed together with related acts and the overriding national policy and congressional purpose of maintaining the existing resident family status of United States citizens. The inroads which this interpretation makes upon the

quota system is either negligible or illusory since the familial exemption claimed has traditionally been an integral part of our immigration policy.

Conclusion

The judgment of the Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

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